Remarks

Claims 1-5, 8-10, 13-22, 25-27, 30-34, and 35-86 are now pending in the subject application.

In an Office Action mailed August 30, 2000, in the case of Application No. 09/328,299, of which the subject application is a continuation, the Patent Office rejected claims 1-5, 8-10, 13-22, 25-27, and 30-34 under 35 U.S.C. § 102(b) or 35 U.S.C. § 103(a). Those same claims, with the same claim numbers, are now pending in the subject continuation application. Therefore, Applicants submit the following remarks.

The August 30, 2000, Office Action ("the Office Action") rejected claims 1, 3-5, 10, 18, 20-22, and 27 under 35 U.S.C. § 102(b) as anticipated by U.S. Pat. No. 5,533,103, to Peavey et al. ("Peavey").

The Office Action states that:

> The claims read on Peavey as follows: Peavey teaches (Abstract: figures 1, 3, 4, 5; col.2,ln.30-45; col.3,ln.10-47; col.4,ln.17-65; col.5,ln.16-48; col.8,ln.17-col.9,ln.47; col.11,ln.39-52) a system, method, program and software including for recording telephone call information in first and second memory which are the same device, and a processor for reconstruction of the telephone by use thereof, the data representation includes location of each segment as required for playback thereof, the processor is comprised of plural components, the data of telephony events is received from the a plurality of sources connected to a telephone switching environment (the users).

Peavey does not anticipate the claimed invention because Peavey does not teach a system, method, program, or software including for recording telephone call information regarding telephony events, nor for using data regarding telephony events to associate telephone call segments of the telephone call to form a data representation of a lifetime of the telephone call. In addition, Peavey does not teach the storing in memory of received telephony events from plurality of sources.

Peavey teaches the recording of outgoing telephone calls using the customer's telephone number or a separate customer identification number as a key to associate the recording of the telephone call with the customer data record (col.3, ln.48 - col.4, ln.48). Peavey's use of a telephone number as a key for a telephone call recording does not anticipate the claimed invention. The claimed invention has the limitation that the processor uses data regarding telephony events associated with the telephone call segment to construct a data representation of a lifetime of the telephone call. Peavey does not anticipate the claimed

invention because the telephone number is not a telephony event. The telephone number is not an action or occurrence that relates to telephony that was detected by a computer. The telephone number is just an identifier that is retrieved from a database. Calling the telephone number a telephony event would be similar to calling a basketball player's number a basketball event. Michael Jordan dunking the ball is a basketball event. His player number 23 is not.

Further, Peavey does not create a data representation of the lifetime of a telephone call. The only telephony-related data Peavey stores is the customer's telephone number and the trunk the telephone call originated from (col. 8, ln. 18-31). The combination of these pieces of information does not provide enough information to represent the lifetime of a call. Much like knowing the home address and phone number of a person does not give a representation of his lifetime, knowing the telephone number and originating trunk does not give a representation of a telephone call's lifetime.

Moreover, Peavey does not anticipate the receiving of data regarding telephony events from a plurality of sources connected to a telephone switching environment. Peavey does not teach the storing of the signal, from the agents to the call processors, that indicates the call has ended. In fact, none of the information stored by Peavey's method in the customer data records qualifies as telephony data. Transmittal of customer data records from the agents' computers to the call processor does not anticipate the claimed invention. Since the pieces of information used by Peavey do not contain telephony event information that can be used to construct a data representation of a lifetime of a telephone call, Peavey does not anticipate the claimed invention.

In rejecting claims 13, 17, 30, and 34 under 35 U.S.C. 103(a), as being unpatentable over Peavey in view of Jorgensen (U.S. Pat. No. 5,867,559), the Office Action states:

> Jorgensen teaches (col.3,ln.34-65; col.4,ln.27-col.5,ln.8) details of the verification process including the playback process using file locations, displaying of graphical representations of the telephone call of at least one segment, displaying data representative of a table of the call record as by display of the record itself on computer screen for verification.

Jorgensen does not teach the displaying of graphical representations of the telephone call, nor of displaying data representative of a table of the call record as by display of the record itself. Because Jorgensen does not teach these elements of the claimed invention, and because Peavey does not disclose the elements of the claimed invention alleged by the Office

Action, a person skilled in the art would not find the claimed invention obvious with knowledge of Jorgensen in view of Peavey.

Jorgensen teaches a system of validation that displays a customer data record while allowing the playback of a conversation between the customer and an agent (col.3, ln.66 - col.4, ln.11). The displaying of the customer data record does not constitute a graphical representation of the telephone call nor a displaying of a table comprising data from the data representation. The customer data record contains information regarding the customer, not the call. This information could include data such as the customer's address, account number, and purchases. Peavey and Jorgensen, either separately or together, do not disclose any list of information that would enable the customer data record to provide a graphical representation of the telephone call. The lack of any telephony event data in the customer data record also reveals the inability to display a graphical representation of a telephone call. Without knowing what telephony events occurred during a telephone call, a graphical representation cannot be made. Because Jorgensen and Peavey do not teach the graphical representation of a telephone call, one ordinarily skilled in the art would not find the claimed invention obvious. Moreover, the Office Action fails to cite any motivation in the art at the time of the invention to combine Peavey and Jorgensen.

In rejecting claims 2, 8, 9, 19, 25, and 26 under 35 U.S.C. 103(a) as being unpatentable over Peavey in view of Brady (U.S. Pat. Num. 5,982,857), the Office Action states:

> It would have been obvious to one of ordinary skill in the art at the time the invention was made to enable the system of Peavey to include[] all of a list of participants and a list of telephony events and a list for the time of each telephony event and the start and end time of the call as taught by Brady for the purpose of enabling the complete verification of certain parts of the telephone record, as well as to use a .WAV file containing the audio with the required offset data to determine start and end points as taught by Brady for the purpose of using a well known file format which would be widely compatible between different systems.

The rejected claims are patentable because, *inter alia*, and in addition to the reasons described above, there is no cited suggestion or motivation in the art at the time of the invention to modify Peavey in view of Brady, as required by MPEP § 2143. Also, Brady does not teach of using a .WAV file to store the audio.

The MPEP establishes three criteria to establish a prima facie case for obviousness. The first of these criteria, that a suggestion or motivation to modify is needed in the prior art, is explained as follows:

> Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992)[1].

Peavey does not teach, suggest, or motivate the combination with Brady, and the Office Action did not offer sufficient evidence that knowledge generally available to one of ordinary skill in the art would teach, suggest, or motivate this merger. The only explanation to suggest the modification given by the Office Action is "for the purpose of enabling the complete verification of certain parts of the telephone record." However, the verification process in Peavey only covers the verification of the customer data record. Peavey does not make the suggestion of verifying telephony events, nor for verifying the start and end time of the call.

Brady does not teach of using the .WAV file format to store its audio. Brady teaches using the .VOX file format (col.4, ln.50).

In rejecting claims 14-16 under 35 U.S.C. 103(a) as being unpatentable over Peavey in view of Brady and further in view of Jorgensen, the Office Action states:

> It would have been obvious to one of ordinary skill in the art at the time the invention was made to enable the system of Peavey modified in view of Brady to retrieve data for the verification process including the playback process as taught by Jorgensen, displaying of graphical representations of the telephone call of at least one segment as taught by Jorgensen, and display data representative of a table of the call record as taught by Jorgensen for the purpose of enabling the verification system described by Peavey modified in view of Brady to retrieve and verify the updated records recorded thereby.

The rejected claims are patentable because, as shown above, there is no suggestion or motivation to modify Peavey in view of Brady as required by MPEP § 2143. As also shown above, Jorgensen does not teach the display of a graphical representation of a phone call, but of a customer data record. Because Jorgensen does not teach the representation of a phone call, it would not have been obvious to one ordinarily skilled in the art to modify Peavey in view of Brady to have a graphical representation of a telephone call, especially when the

---

[1] MPEP 2143.01.

graphical representation comprises a representation of each segment of the call or where the graphical representation comprises a representation of the length of time of each segment of the call.

Moreover, the Patent Office is not allowed to use hindsight to determine obviousness. In particular, applicant's invention cannot be used as a roadmap to combine disparate references. The most egregious example of this practice would be to say: "It would be obvious to one skilled in the art at the time of the invention, motivated to create applicant's claimed invention, to combine the teachings of A and B." Clearly such an approach is not permitted. Applicants are confident that the Patent Office will endeavor to cite a motivation *in the prior art* to combine cited references, and will not fabricate a motivation to combine references from applicants' patent application and claims.

In view of the above amendments and remarks, Applicants believe the subject application has been placed in condition for allowance, and such action is respectfully requested. Please charge appropriate fees, if any, to Deposit Account 16-1150.

Respectfully submitted,

Steven S. Underwood (Reg. No. 47,205)

Date: July 23, 2001

For Edmond R. Bannon 32,110
(Reg. No.)

PENNIE & EDMONDS LLP
1155 Avenue of the Americas
New York, NY 10036
(212) 790-9090